CF0000063034

(2) (2)

समक्ष माननीय उच्च न्यायालय मध्य प्रदेश, जबलपुर.

(6073)

Filed on 19/6/2000
by Shri Rajesh N. Khemani
Advocate

फौजदारी अपील 1545 /2000

Single Bench (Criminal)

उमेश केवट उम्र 23 वर्ष आत्मज श्री लखन केवट,
निवासी ग्राम- करहीडीह पटवारी हल्का नं.
17, तहसील व जिला दुर्ग, म.प्र. आरक्षी केन्द्र
पुलगांव तहसील व जिला दुर्ग, म.प्र.
अभियुक्त कारागार में हैं ।

अपीलार्थी
अभियुक्त.

- :: विरूध्द :: -

मध्य प्रदेश शासन,
द्वारा जिला दण्डाधिकारी दुर्ग,
तहसील व जिला दुर्ग, म.प्र.

उत्तरवादी.
अभियोजन.

(43)
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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Before : **Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

Criminal Appeal No. 1545 of 2000.

Appellant : Umesh Kewat

- Vs.-

Respondent : State of Madhya Pradesh
(Now Chhattisgarh)

Present: Shri Abhay Tiwari, learned counsel for the appellant.
Shri U.K.S. Chandel, learned Panel Lawyer, for the State.

ORAL JUDGMENT
(Passed on 7th March, 2006)

This appeal is directed against the Judgment dated 24-04-2000, delivered by Shri B.K. Shrivastava, learned Sessions Judge, Durg in Session Case No.295 of 1997, whereby the appellant was convicted under Section 376 (2) (e) of the Indian Penal Code and was sentenced to undergo R.I. for 10 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for three months.

(2) Briefly stated prosecution story is that on 23-01-1997 at about 9.00 a.m., the prosecutrix, a pregnant lady aged about 23 years had gone to the field for attending call of nature. The appellant came there, forcibly pushed the prosecutrix on the ground and mounting himself upon her, committed rape on her. The prosecutrix came home crying and narrated the incident to her husband – Charandas Sahu (PW-3) and to neighbour Dashoda Bai (P.W.2). First Information Report - Ex. P/1 was lodged in Out-post Jevra Sirsa, on the same day at 2.20 p.m., by the prosecutrix. Upon medical examination, Dr. Madhuri Gupta (P.W-4) found

that the prosecutrix was carrying a full term pregnancy of 9 months. She also found that there was an abrasion on her body. No definite opinion about rape could be given by her. The appellant was also examined by Dr. P.C. Deshmukh (P.W.-5) who found him to be capable of performing sexual intercourse. The Petticoat - article A of the prosecutrix, Chaddy – article B of the appellant, Pubic hair – article C and Vaginal slide – article D were sent for chemical examination to the Forensic Science Laboratory, Raipur. However, on none of these articles semen and human spermatozoa were found. After completing the investigation, the appellant was prosecuted. The appellant abjured the guilt. The prosecution examined as many as 8 witnesses. No evidence in defence was adduced. Learned trial Judge relying upon the unrebutted testimony of the prosecutrix, which was duly corroborated by her husband Charandas Sahu (P.W.3) convicted and sentenced the appellant as aforesaid in paragraph 1.

(3) Shri Abhay Tiwari, learned counsel for the appellant made a two-fold submission. Firstly, he contended that the very fact that in the report of Forensic Science Laboratory, Raipur presence of semen and human spermatozoa was not confirmed either on the petticoat or vaginal slide of the prosecutrix or on the chaddy of the appellant goes to show that the testimony of the prosecutrix is not reliable. Secondly, he contended that the appellant has already undergone sentence from 24-01-1997 to 11-03-1997 and thereafter from 07-12-1999 till date, therefore, the sentence awarded by the learned trial Court should be modified and reduced to the sentence already undergone in the facts and circumstances of the case. On the other hand, Shri U.K.S. Chandel, learned Panel Lawyer has argued in support of the impugned Judgment.

(4) I have gone through the record of Sessions Case No.295 of 1997 and considered the rival contentions. I have also minutely perused the testimony of the prosecutrix – P.W.1. Her testimony that immediately after completion of call of nature by her, the appellant came there, pushed her and committed rape on her is wholly unrebutted in cross-examination. There is absolutely nothing in the cross-examination of the prosecutrix which would render her testimony unworthy of credit or give any reason for falsely implicating the appellant. Her testimony is further corroborated not only by her husband Charandas Sahu–P.W.3 and Dashoda Bai – P.W.2 to whom she had immediately, on returning home narrated the incident, but also by the F.I.R. Ex.P/1 which was promptly lodged by her. The unrebutted testimony of Charandas Sahu-P.W.3 also shows that upon being confronted with the allegation of rape with the prosecutrix the appellant had, admitting his guilt, prayed to be forgiven. Under these circumstances, mere fact that no injuries were found on her person or that the petticoat and vaginal slide of the prosecutrix or the chaddi of the appellant were not found to contain semen and human spermatozoa as per the report Ex.P/12 of FSL, Raipur, would not be sufficient to discard the testimony of the prosecutrix, which is reliable and inspires confidence.

(5) Having thus considered the evidence led by the prosecution, I am of the considered opinion that the conviction of the appellant under Section 376 (2) (e) of I.P.C. is well founded and does not call for any interference by this Court. So far as the second limb of argument advanced by learned counsel for the appellant is concerned, the prosecutrix was carrying full term pregnancy of 9 months at the time when rape was committed upon her. Considering this fact, in my considered

opinion, the sentence awarded by the learned trial Court is wholly justified and does not call for any interference.

(6) In the result, this appeal has no merit and is accordingly dismissed.

Sd/-
Dilip Raosaheb
Deshmukh
Judge

Subbu